lant. The appellant had said in evidence and I quote:—

"Of course, he made his own road. We planted the road made by Voo on second stage with rubber trees. Also planted track made by Voo on 1st stage."

At page 55 of the record, the appellant's counsel is recorded to have made the following admission from the bar, and I quote:—

"Not deny existence of road or track. We say not in conformity with clause 3 of the agreement."

Seen in the light of these admissions, the respondent's explanation of P6 as an offer to repair or remake the existing road seems reasonable and logical. The admissions also discount the suggestion that the "indifferent and lethargic attitude" shown by the respondent towards the 3 letters (P3, P4 and P5) he received" was consistent with the conduct of a man who had nothing to say in reply.

There was, therefore, ample evidence before the trial judge, apart from the demeanour of witnesses, to justify his finding of fact that a road had been constructed, in accordance with the agreement. I, therefore agree, that this appeal should be dismissed, with costs both in this court and in the court below.

Appeal dismissed.

PUBLIC PROSECUTOR v. KANG SIEW CHONG

[A.Cr.J. (Raja Azlan Shah J.) April 29, 1968]
[Raub — Criminal Appeal No. 2 of 1966]

Penal Code, ss. 44 and 385 — Extortion, attempted threat to exercise legal power for an illegal purpose — "Injury" — Meaning of.

A threat to exercise a legal power in an illegal manner is an "injury" within the meaning of section 44 of the Penal Code.

Where a police officer, in exercise of his power under regulation 7(1) of the National Registration Regulation, 1960, threatens to take a person to the police station in order to take his particulars, and the threat is made with the object of exacting payment of money that is not due, the exercise of the power is illegal, and the threat constitutes a threat of "injury" within the meaning of section 44 of the Penal Code.

Case referred to:—

(1) *B. Appalasami* (1892), 1 Weir 441.

CRIMINAL APPEAL.

Abdullah bin Ghazali (Deputy Public Prosecutor) for the appellant.

R. C. M. Rayan for the respondent.

Raja Azlan Shah J.: The accused was charged with attempted extortion by putting a courting couple in fear of injury and thereby inducing them to deliver cash $50 to him, an offence punishable under section 385 of the Penal Code.

The learned president acquitted him at the end of the whole case on the sole ground that one of the ingredients of the section, that is, fear of injury, was not proved beyond reasonable doubt. He observed that he should have acquitted the accused at the close of the prosecution case had he been aware of the provisions of regulation 7(1) of the National Registration Regulation, 1960, which *inter alia,* empowers a police officer at any time to require any person to produce his identity card for inspection. It is necessary to reproduce his reason:—

"It has been held by the High Court that the exercise or the threat to exercise a legal power legally is not 'injury' — reference March issue M.L.J. 1962 at pages xxix & xxx, under the title 'Legal Logic'.

From the prosecution evidence, I find that accused No. 1 had threatened to take both P.W.1 and P.W.2 to the police station in order to obtain their particulars. Accused No. 1 was a police officer in uniform. He was merely exercising his legal power under regulation 7(1) quoted above in requiring P.W.1 and P.W.2 to produce their N.R.I.C. to him. Even if he had taken P.W.1 and P.W.2 to police station in order to obtain or establish their identities, accused No. 1 was still exercising his legal power in a legal manner.

Therefore the threat by accused No. 1 that he would take both P.W.1 and P.W.2 to police station did not amount to putting a person 'in fear of injury' ".

It was proved that at about 8.00 p.m. on 25th February 1965 a couple were sitting in close proximity to each other on a bench in a football field in such circumstances that their behaviour was open to question. The man was a married man and the girl was unmarried. At about 10.00 p.m. the accused entered the field. He was a police constable and was in uniform. He questioned the couple as to their misconduct and demanded their identity cards. The couple did not have their identity cards with them. He threatened to take them to the police station unless they gave him $50. He allowed the man to go home to fetch the money, but the girl was left behind to act as hostage. The man instead went to the police station and lodged a report.

In my view the learned president had properly directed his mind on the law that the threat to exercise a legal power does not constitute injury within the meaning of section 44 of the Penal Code. But where he had erred was in failing to consider the exercise of the legal power. Under the section it is incumbent to distinguish between the threat to use the process of law and the exercise of that process. The former, for example, as in the present appeal the threat to take the couple to the police station in order to obtain their particulars, does not constitute injury as prescribed in section 44. But if, as in this appeal, the threat is made with the object of exacting payment of money that is not due, it is an abuse of the exercise of that power and is therefore illegal, and such a threat made with such an object constitutes a threat of injury within the meaning of the section. A close

parallel is afforded by the case of *B. Appalasami* [1] which is briefly reported in *Ratanlal* on "The Law of Crimes" (21st edn.), p. 86:—

"Threat to use the process of law for the purpose of enforcing payment of more than is due is illegal and such a threat made with such an object is a threat of injury".

It is equally a threat of injury where money is exacted where none whatever is payable, as where a greater fee is exacted than what is legally due.

The prosecution had, in my view, established *prima facie* case which, if unrebutted, would warrant a conviction.

The defence was a mere denial. The accused said he did not extort or attempt to extort $50 from the couple. He did not threaten them at all. He did not say that he would arrest them if they refused to produce their identity cards. On the facts, a court, acting reasonably, is entitled to conclude that the accused had failed to raise a reasonable doubt as to his guilt. Both the couple vehemently said that the accused exacted the fee, and that was corroborated by P.W.4 who was then in the vicinity of the crime and who heard people talking and asking for money although he could not say who had uttered those words.

The appeal against acquittal is therefore allowed.

Appeal allowed.

SUNDARAM v. CHEW CHOO KHOON

[A.C.J. (Chang Min Tat J.) May 6, 1968]

[Ipoh — Civil Appeal No. 1 of 1968]

Practice and Procedure — Appeal — From statutory body to High Court — Whether by originating motion or notice of motion — R.S.C., 1957, O. 59 r. 13.

Practice and Procedure — English practice — Applicability of — Provision in local rules — R.S.C., 1957, O. 1 r. 2.

On November 16, 1967, the Collector of Land Revenue disallowed an application made by the appellant for the adjournment of a foreclosure action instituted by the respondent until the final disposal of the civil proceedings brought by the appellant against the respondent in the High Court at Ipoh. By notice of motion, the appellant lodged an appeal in the High Court against the decision of the collector. The notice of motion was filed and served on the respondent. The respondent applied to set aside the notice of motion on the ground that an appeal from a statutory body to the High Court should be by way of an originating motion.

Held: (1) the procedure for an appeal from a statutory body to the High Court is laid down in O. 59 r. 13 of the Rules of the Supreme Court. On the construction of the word 'motion' in rule 13(1), such an appeal must be lodged by the originating motion for the following reasons: (i) a statutory body, though vested with judicial powers, is not a subordinate court within the meaning of section 3 of the Courts Ordinance, 1948. An appeal from the decision of such a statutory body is an origination and not a continuation of the judicial process: (ii) the deliberate use of 'motion' in O. 59 r. 13(1) in contradistinction to 'notice of motion' in the corresponding English rule — O. 59 r. 38 established that under O. 59 r. 13(1) of the local Rules of the Supreme Court, an appeal from a statutory body must be lodged by an originating motion;

(2) the defect occasioned by lodging the appeal by way of notice of motion was a mere irregularity curable under O. 70 of the Rules of the Supreme Court. The application to set aside the notice of motion was therefore dismissed but costs were awarded to the respondent/applicant.

Cases referred to:—

(1) *Re Abdul Aziz's Application* [1962] M.L.J. 64.

(2) *Liew Peck Lian & Ors.* v. *The Conservator of Forests, Johore* [1961] M.L.J. 117.

(3) *Oversea-Chinese Banking Corporation Ltd.* v. *The Commissioner of the Federal Capital of Kuala Lumpur* [1963] M.L.J. 294.

(4) *Shell Company of the Federation of Malaya Ltd.* v. *Chairman, Municipal Council* [1961] M.L.J. 141, C.A.

(5) *Yong Yoke Sung & Ors.* v. *Sungei Way Estate* [1965] 2 M.L.J. 229.

CIVIL APPEAL.

N. Sharma for the appellant.

S. N. Leow for the respondent.

Chang Min Tat J.: By notice of motion, an appeal, listed as Civil Appeal No. 1 of 1968, was lodged in the High Court at Ipoh against the decision of the Collector of Land Revenue, Kuala Kangsar, made on 16th November, 1967, and notified to the appellant on 20th November, 1967, in the matter of Kuala Kangsar Foreclosure Application No. 5 of 1966, whereby the Collector of Land Revenue disallowed the application of the chargor for the adjournment of the foreclosure action instituted by the chargee until the final disposal in the High Court of the chargor's action in Ipoh High Court Civil Suit No. 232 of 1967 against the chargee to void the charges for alleged breaches of the Moneylenders Ordinance on the part of the chargee. The notice of motion was filed on the 22nd January, 1968, and served on the solicitor for the respondent. The respondent thereupon applied by notice of motion filed on the 28th February, 1968, to set aside the chargor's notice of motion upon the sole ground that an appeal from a statutory body to the High Court should be by originating motion.

The statutory provision for an appeal from the decision of the Collector of Land Revenue in any enquiry in a chargee's application is section 37 of the National Land Code. The procedure laid down for such an appeal is in Order 59 rule 13(1) of the Rules of the Supreme Court, which reads as follows:—

"13. (1) Where under any written law an appeal lies from any decision of any person or body of persons to the High Court or to the Supreme Court such appeal shall be made to the High Court in the State where the decision was given by motion setting out the grounds of appeal, supported by affidavit and, if the court so directs at the hearing, by oral evidence."